IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL Nos 972 of 1979 and 973 of 1979

with

FIRST APPEAL Nos 1250 of 1980 to 1258 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAWASJI BEHRAMJI FATAKIA DECD.THRO'HIS HEIRS

Versus

GOVT.OF GUJARAT

Appearance:

MR ARUN H MEHTA Sr. Advocate with Mr. Praful Thakkar, for appellants in all appeals

MR LB DABHI AGP for respondents in all appeals

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 20/11/2002

COMMON ORAL JUDGEMENT

1. In this batch of 11 First Appeals which are filed under Section 96 of the Code of Civil Procedure ('the Code' for short), appellants challenge two separate judgments and decree both of even dated 27.11.1978, one which is recorded in Special Civil Suit Nos. 30 of 1978 and 31 of 1978 and another which is recorded in Regular Civil Suit Nos.33 of 1978 to 41 of 1978 by the learned Civil Judge (S.D.)., Valsad by which 11 separate suits filed by the appellants for recovery of different amounts came to be dismissed.

2. Since common questions of law and facts are involved in this batch of 11 First Appeals, at the suggestion made by the learned advocates appearing for the parties, all these appeals are consolidated, heard together and decided by this common judgment.

3. The appellants are the plaintiffs and the respondent is the defendant and, therefore, for the sake of convenience and brevity, the parties are referred to hereinafter in this judgment as "plaintiffs" and "defendant".

4. In order to better appreciate the controversy raised in this batch of appeals, it would be advantageous to refer to the facts of First Appeal No. 972 of 1979 which is arising out of the judgment and decree recorded in Special Civil Suit No.30 of 1978.

5. Facts are these:-

(i) The plaintiffs came forward with the claim that the landless agricultural labourers of the Scheduled Tribes and others of Pardi, Dharampur, Valsad and Umbergaon Talukas of Valsad District were carrying on agitation for the last many years for obtaining lands for cultivation and in order to meet their demand, the Government of Gujarat, enacted 'The Gujarat Agricultural Lands Ceilings Act, 1961 (Act No. XXVII of 1961)' (the 'Ceiling Act' for short) with an object to restrict holding of lands in excess of certain limits and to acquire surplus lands from the holders and to distribute them amongst the landless labourers for the purpose of agriculture.

(ii) It was the case of the plaintiffs before the trial court that the Government expected to acquire 14,000 acres of land under the said enactment collectively from all the four Talukas mentioned above but on actual calculation found that only 8,000 acres of land would be available on implementation of the

provisions of the Ceiling Act and hence with a view to obtain remaining 6,000 acres of land, Premjibhai Thakkar, the then Revenue Minister in Government of Gujarat, on behalf of the Government, approached big landlords and influential persons in those Talukas and requested them to relinquish in favour of the Government their lands under section 74 of the Bombay Land Revenue Code or to persuade other landlords to do so by exercising their influence. The plaintiffs pleaded that the then Revenue Minister also assured them that the surrender of lands thus was not going to be gratuitious and that those who surrender land thus would be paid compensation at the rate fixed by the Government and that after discussions at various levels, it was agreed by some landlords that they would relinquish their lands to the Government on condition that the Government paid them compensation as per the rate that the then Chief Minister Hitnedrabhai Desai fixed.

(iii) It was the case of the plaintiffs that in furtherance of the said arrangement, the Government of Gujarat issued Government Resolution No. ICH-1767/82268/J dated 27.7.1970, accepting inter alia the recommendations of the then Chief Minister that compensation for "D" category of land should be Rs.500/per acre and for "F" and "H" categories of land that should be RS.400/- per acre. The plaintiffs pleaded that the said Government resolution directed that the compensation at the above rates should be paid to the landlords who have voluntarily surrendered their lands in Valsad District. According to the plaintiffs the then Revenue Minister also persuaded big landlords and influential persons to motivate other landlords to surrender their lands by paying market price to them (other landlords) and accept as compensation the amount as fixed by the then Chief Minister and bear the loss accruing from paying higher price and accepting compensation at the lower rate themselves and it was also suggested that in such cases endorsement should be made to that effect in the notice of surrender by the other landlords. It was the case of the plaintiffs that due to prohibition imposed under the Ceiling Act, it was not possible for big landlords and influential persons to get sale deeds executed in their favour and therefore the arrangement was made that the deed of surrender be executed directly by those persons from whom the lands were purchased.

(iv) The plaintiffs then put forward their case and pleaded that plaintiff No.2 was an influential agriculturist in Umbegaon Taluka and that he desired that

demands of landless labourers be satisfied and as such took a leading part in the negotiations and as per their plea the then Revenue Minister personally requested plaintiff No.2 to surrender, in addition to 200 acres of land that he had already surrendered, another 250 acres of land by persuading other landholders to surrender by paying those landholders compensation at the market price and by suffering loss by accepting only that much compensation as paid on voluntary surrender under the aforesaid Government resolution by the Government.

(v) The plaintiffs pleaded that plaintiff No.2 conceded to the request and it was agreed that on paying market price to some land holders, plaintiff No.2 would get 250 acres of land surrendered to Government directly from those landholders with necessary endorsement on application for surrender and that plaintiff No.2 would accept the compensation as fixed by the Government in the aforesaid resolution. The plaintiffs further pleaded that in pursuance thereof plaintiff No.2 procured 250 acres of land and surrendered them through their original land holders to the Government and that he had to procure those lands by paying the market price as those land holders refused to part with the land for the compensation at the rate fixed by the Government. It was the case of the plaintiffs that plaintiff No.2 procured 31-25 acres of land as per the details mentioned in schedule appended to Special Civil Suit No.30 of 1978 from deceased plaintiff No.1 in that suit on 3.10.1970 for being surrendered to the Government by paying plaintiff No.1 a sum of Rs.19,061/- and also got the letter of surrender executed from him with all necessary endorsements. According to the plaintiffs, plaintiff No.2 who is common in all the aforementioned suits, procured 84-12 acres of land as per the details mentioned in the schedule appended to the plaint in Special Civil Suit No.31 of 1978 from plaintiff No.1 in that suit on or around 2.10.1970 by paying Rs.47,000 and also got the letters of surrender executed by plaintiff No.1. Plaintiff No.2 however came forward with the case that in all he procured by this method total 250 acres of land and duly surrendered all those lands to the Government. The principal contention with which the plaintiffs came forward was that as per Government Resolution No.ICH-1767/82268/J dated 27.7.1970 the Government ought to have paid them compensation at the rate of Rs.400 per acre but instead of the same, plaintiff No.2 was informed in the last week of March 1972 to approach the Treasury Office, Dharampur to receive aggregate sum of RS.13,552.50 towards the compensation of all the surrendered lands. It was the case of the plaintiffs

that no breakup was worked out but on inquiry it was found that the compensation for the lands procured by plaintiff No.2 from other land holders by paying them market price was also worked out as if they were lands vested in the Government under Section 21 of the Ceiling Act.

(vi) It was pleaded that compensation for the lands which were subject matter of Special Civil Suit No.30 of 1978 came to be Rs.1985/- and the same for the lands in Special Civil Suit No. 31 of 1978 came to Rs.6471.25. As per the claim of the plaintiffs, the amount payable as compensation for the lands in Special Civil Suit No.30 of 1978 should be Rs.12,650/- and for the lands in Special Civil Suit No. 31 of 1978 should be Rs.33,750/- The plaintiffs further pleaded that the provisions of the Ceiling Act are not attracted so far as the lands surrendered by plaintiff No.1 in both the cases are concerned, and as such, compensation paid on the basis of the said enactment is illegal. The plaintiffs also pleaded that Government ought not to have taken the personal lands of plaintiff No.2 and members of his family in determining the compensation for the lands surrendered by plaintiff No.1 as the lands surrendered by plaintiff No.1 were never the lands of plaintiff No.2. It was also claimed that plaintiff No.2 had to pay in all Rs.1,81,453.00 for persuading other land holders for the surrender of 250 acres of land and that compensation when calculated at the rate of Rs.400 per acre would come to Rs. 1 lac only putting plaintiff No.2 to the loss of Rs.81,853.00. The plaintiffs, therefore, filed the above suits for recovery of the amounts which are shown in the following table:

SCS/RCS No.	F.A.No.	Amount claimed Rs.
Spl.C.S.No.30/78	972/1979	10,665.00
Spl.C.S.No.31/78	973/1979	27,248.75
R.C.S.No.33/78	1250/1980	1,597.50
R.C.S.No.34/78	1251/1980	1,367.50
R.C.S.No.35/78	1252/1980	2,240.00
R.C.S.No.36/78	1253/1980	2,600.00
R.C.S.No.37/78	1254/1980	860.00
R.C.S.No.38/78	1255/1980	9,156.25
R.C.S.No.39/78	1256/1980	3,773.75
R.C.S.No.40/78	1257/1980	5,121,25
R.C.S.No.41/78	1258/1980	980.00

Thus, the plaintiffs filed 11 separate suits as mentioned

above and prayed for decree for the said sum in terms of their prayer made in the plaints with interest and cost.

6. The defendant, State of Gujarat, hotly contested the suits by filing separate written statements in all the suits wherein inter alia validity of the suits has been challenged.

(i) It was also claimed that the surrender of land by plaintiff No.1 was for and on behalf of plaintiff No.2 and that plaintiff No.1 has been duly paid the market price for the surrendered lands. The principal ground of challenge to the plaintiffs' suits was that the Ceiling Act came into force on 1.9.1961 and that plaintiff No.2 was holding lands in excess of the ceiling limit and hence plaintiff No.2 was served with a notice under Section 20 (1) of the Ceiling Act in respect of the lands admeasuring 583.27 acres equivalent to 1465-04-02 acres in form of dry crop.

(ii) According to the defendant, the lands calculated as surplus lands included those lands which stood in the name of plaintiff Nos.3-4-5 who too are the members of the family of plaintiff No.2. The defendant further pleaded that plaintiff No.2 then approached this Court by filing Special Civil Application No.145 of 1964 for a writ to quash the ceiling proceedings but the said petition came to be dismissed on 23.2.1970 and plaintiff No.2 then approached the Supreme Court of India but was unsuccessful there also.

(iii) Pending the matter in this Court, as per the case put forward by the defendant, plaintiff No.2 submitted on 2.4.1967 an application to the Collector, Valsad stating that he wanted to settle the matter by way of compromise, with the Government on the terms that he surrender another 300 acres of land under the Ceiling Act in addition to 100 acres of land already surrendered and also submitted that he would purchase 200 acres of land from others and surrender them to the Government and balance 100 acres of land would be surrendered from his own lands and that in lieu thereof proceedings under the Ceiling Act be dropped.

(iv) The defendant pleaded that pursuant to the above a fresh notice was issued on 20.10.1970 and Mamlatdar and Agricultural Land Tribunal, Umbergaon, on 5.2.1971 in Ceiling Case No.51/2, declared 298.28.02 acres as surplus lands under Section 21 of the Ceiling Act and that thereafter plaintiff No.2 purchased 250 acres of land including those of plaintiff No.1 and handed them over to

the Government by getting the deed of surrender executed directly from the original land holders, instead of executing sale deeds in his favour and then surrendering the same. It was further pleaded by the defendant that the said surrender was treated as the surrender of the lands by plaintiff No.2 in satisfaction of the order under Ceiling Case and that plaintiff No.2 was paid compensation for the said land at the rate provided under Section 23 of the Ceiling Act for 400 acres of land whereas for 50 acres of land he was paid compensation at the rate of Rs.400 per acre vide Government Resolution No.ICH-1767/82268-J dated 27.7.1970 read with Resolution No.ICH-1767/82268-J dated 25.8.1967. The defendant also pleaded that the Government settled the ceiling cases at the instance of plaintiff No.2 and accepted 298-28-02 acres of land as surplus land of plaintiff No.2 and further accepted relinquishment by plaintiff No.1 at the instance of plaintiff No.2 in satisfaction of the order as regards the surplus lands under the ceiling case, abandoning its claim for 1465 acres. According to the defendant, the plaintiffs ought to have preferred an Appeal over the decision in ceiling case and on fixation of the compensation amount and as they have not done so, the suits are not tenable and prayed to dismiss the same.

7. Separate but identical issues were framed by the learned Trial Judge in the above suits at Ex.11.

8. In one set, the learned trial Judge consolidated Special Civil Suit Nos.30/78 and 31/78 and in another set consolidated Regular Civil Suit Nos.33/78 to 41/78. He therefore recorded evidence in two separate sets, in Special Civil Suit No.30 of 1978 and another in Regular Civil Suit No.33/78.

9. So far as oral evidence is concerned, on behalf of the plaintiffs' side, Jugalkishore Devichand Barlaiwala was examined at Ex.49 in Special Civil Suit No. 30 of 1978 whereas he was examined at Ex.59 in Regular Civil Suit No.33 of 1978. On behalf of defendant, no one entered in the witness box.

10. So far as documentary evidence is concerned, on behalf of the plaintiffs several documents have been produced and placed reliance upon them.

11. The learned trial Judge on appreciation and evaluation of the evidence, recorded separate but identical findings in both sets of suits which can be summarized as under:

(i) The suit is maintainable in law.
(ii) It is not proved that the lands were surrendered at the instance of the Government.
(iii) The suit lands were given to the Government as per terms of compromise in the Ceiling Proceedings pending against plaintiff Jugalkishore.
(iv) The suit land was accepted by the defendant as surplus lands in ceiling proceedings.
(v) The plaintiffs are not entitled to receive Rs.400/- per acre as compensation.
(vi) The plaintiffs have a cause of action to file the suits.
(vii) Civil Court has jurisdiction to entertain the suits in view of the provisions of the Ceiling Act and Land Revenue Jurisdiction Act.
(viii) The plaintiffs are not entitled to the amount claimed in the suits.

12. On the aforesaid findings recorded by the learned trial Judge, all the suits filed by the plaintiffs came to be dismissed with cost and it is this findings and the consequential judgments and decree recorded by the learned Civil Judge (S.D.)., Valsad is now on the anvil of scrutiny before this Court at the instance of the plaintiffs in these separate 11 First Appeals filed by them.

13. Mr. A.H. Mehta, learned Senior counsel for the plaintiffs contended that there is ample evidence on record that the plaintiffs have surrendered the lands in question under the Government Resolution No. ICH-1767/82268/J dated 25.8.1967 and not under the Ceiling Act as held by the learned trial Judge and, therefore, finding to that effect arrived at by he learned trial Judge is erroneous, perverse and on misinterpretation of the evidence and therefore the same is required to be quashed and set aside. He also highlighted the scope of First Appeal wherein this court can examine the evidence adduced by the parties thoroughly and even if finding of fact recorded by the trial court is perverse they can also be set aside in the First Appeal. In this connection Mr. Mehta, learned Senior counsel has taken this Court through the entire evidence recorded before the trial court. He therefore urged that the findings arrived at by the learned trial Judge and the consequential judgment and decree recorded by him deserves to be set aside by allowing these appeals and thereby decreeing the suits filed by the plaintiffs for the amount claimed in the suits as prayed for.

14. Mr. L.B.Dabhi, learned AGP for the defendant State contended that there is ample evidence on record to show that the land in question was surrendered by the plaintiffs under the Ceiling Act and not at the instance of the Government as per resolution at Ex.43. The learned trial Judge has after considering the oral as well as documentary evidence adduced by the plaintiffs' side categorically recorded the aforesaid findings and, therefore, there is no illegality committed by the learned trial Judge in recording the decree by which the suits filed by all the plaintiffs came to be dismissed and therefore the same does not warrant any interference by this Court in exercise of powers under Section 96 of the Code and, therefore, he urged to confirm the said judgment and decree by dismissing the appeals filed by the plaintiffs.

15. I have considered the submissions advanced by Mr. A.H. Mehta, learned Senior Counsel for the plaintiffs and Mr. L.B. Dabhi, learned AGP for the defendant State of Gujarat. I have also perused the memo of appeals, grounds set out therein and the impugned judgments and decree which have given rise to the present appeals.

16. At the outset be it noted that the plaintiffs cleverly avoided mentioning certain facts of importance affecting the merits of their claim.

17. In para 6 of the plaint, the plaintiffs averred that plaintiff No.2 is an influential agriculturist in Umbergaon Taluka and he desired that the demands of the landless labourers be satisfied and hence he had taken a leading part in the negotiations and that in addition to 200 acres of land plaintiff No.2 was surrendering he was persuaded by Premjibhai Thakkar, the then Revenue Minister personally to procure another 250 acres of land by persuading other landholders to surrender their lands by paying them market price. Plaintiff No.2 conveniently avoided mentioning that case under the Ceiling Act was filed against him and also avoided mentioned that he had written letter dated 2.4.1969 produced at Ex.36 offering a compromise formula that in exchange of his surrendering in all 400 acres of land out of which 200 acres would be the land at that time owned by him and members of his family and other 200 acres of land would be purchased by him, the case under Ceiling Act be settled. Plaintiff No.2 also cleverly not stated as to on what grounds he surrendered 200 acres of land. On the contrary, an impression was attempted to be created that the said surrender too was in response to the call made by the Government to voluntarily surrender the land.

18. Be it also noted that a suggestion was made in the plaint that plaintiff No.1 surrendered the land in favour of the Government and therefore plaintiff No.1 was entitled to get compensation at the rate determined by the then Chief Minister. However, during the course of arguments before the trial court, when it was asked whether surrender of land by plaintiff No.1 was on his own account or that the surrender of the land was for and on behalf of plaintiff No.2, the learned advocate for the plaintiffs fairly conceded that the surrender of land by plaintiff No.1 in each case, who was the original holder of the lands, was for and on behalf of plaintiff No.2, that is, Jugalkishore Devichand Borlaiwala and, therefore, the question as to on what count plaintiff No.1 is entitled to get compensation does not arise for determination at all and therefore the only question which remained for determination before the trial court was whether plaintiff No.2 is entitled to get compensation and whether compensation paid to him is adequate or the same is calculated on wrong basis and therefore the point about plaintiff No.1's right to claim compensation was not required to be decided by the trial court.

19. In light of the aforesaid undisputed fact situation the only question which calls for determination in this batch of 11 First Appeals is as to whether the lands were surrendered under the Ceiling Act or under the Government Resolution No.ICH-1767/82268/J dated 25.8.1967 produced at Ex.43 and 47. An attempt was made to prove that the plaintiffs surrendered 250 acres of land only under the Government resolution dated 25.8.1967 at Ex.43.

20. So far as 50 acres of land out of 250 acres of land is concerned, Government conceded before the lower court that said 50 acres of land was treated as voluntary surrender and fall within the purview of resolution Ex.43 and compensation for the said surrendered land was paid at the rate of Rs.400 per acre and therefore the question of those 50 acres of land also did not survive and the question remained with regard to the balance 200 acres of land.

21. By referring to clause (1) of para 3 of the Resolution at Ex.43, it is sought to be contended that the purpose behind issuing the said resolution Ex.43 was to acquire lands from same Taluka of Valsad District for being allotted to landless Adivasis, whereas under the Ceiling Act, the idea of the Government in enacting the said Act was to make uniform provision for the whole

State in respect of restriction upon holding agricultural land in excess of certain limit and also to secure the distribution of agricultural lands held to be surplus amongst persons who need land including cooperative farming society, landless persons and agricultural labourers and small holders and contended that the entire purpose of both the schemes is different. It was also sought to be contended that the resolution Ex.43 is in the nature of contract and therefore the surrender of 200 acres of land under the resolution only and not under the Ceiling Act.

22. On having examined the contents of resolution Ex.43 it unequivocally provides for the surrender of the land under Section 74 of the Land Revenue Code but merely because the documents of surrender collectively produced at Ex.37 mention that the surrender was made under section 74 of the Bombay Land Revenue Code, it cannot be inferred that the surrender was made under resolution Ex.43. Section 74 of the Bombay Land Revenue Code provides for relinquishment of land by its occupant and only meaning that can be attributed in the present set of circumstances is that the lands surrendered as per Ex.37 were not compulsory acquisition but it was voluntarily relinquished. Any land which is given voluntarily to the Government has to be given vide section 74 of the Bombay Land Revenue Code. The lands have been voluntarily surrendered by the landlords in consideration of plaintiff No.2 having contracted with the Government to so make the land available to the Government on Government agreeing to drop the ceiling case against plaintiff No.2. It be noted that the deeds of surrender Ex.37 already mentioned the purpose of surrender on the top of each letter of surrender and in lieu of the surrender of lands the Government dropped the ceiling proceedings initiated against plaintiff No.2 Jugalkishore.

23. The contention that the purpose of acquiring lands under the Ceiling Act and under the resolution Ex.43 is different, has no substance as from the very pleadings of the plaintiffs it was the case of the plaintiffs that the Ceiling Act was enacted for acquiring the lands for making them available for cultivation to landless labourers and that the Government expected to get 14000 acres of land from four talukas of Valsad District but then on working out details, the Government felt that only 8000 acres of land could be acquired thereunder and hence other 6000 acres were sought to be acquired by other device which came to be declared in resolution Ex.43. This fact itself is sufficient to

dislodge the plaintiffs' claim that the purpose of Ceiling Act and resolution is different.

24. On having examined the oral testimony of plaintiff No.2 Jugalkishore recorded at Ex.49, it is seen that the Ceiling Act came into fore on 1.9.1961 and thereupon plaintiff No.2 being a big landlord holding much surplus land was served with a notice on 12.3.1963 under section 10 of the Ceiling Act and produced at Ex.34 where he was called upon to make declaration about the surplus land and thereupon plaintiff No.2 filed Special Civil Application No.145 of 1964 in this Court on 29.4.1964 and obtained stay of further proceeding against him under the Ceiling Act. A copy of the writ issued by this Court is produced at Ex.35. While the aforesaid Special Civil Application was pending, some negotiations started between the Government and Land holders of Bulsar, Pardi, Dharampur and Umbergaon Talukas and on successful conclusion of the said negotiations, resolution No.ICH-1767/82268-J dated 25.8.1967, Ex.43 came to be passed providing for voluntary surrender of lands. From the record it appears that while Special Civil Application No. 145 of 1964 was pending in this Court plaintiff No.2 vide his letter Ex.36 dated 2.4.1969 gave a compromise formula to the Government and as per the compromise formula plaintiff No.2 suggested that on acceptance of the offer he would withdraw the Special Civil Application from this Court. It seems that no action was taken by the Government till the SCA which was dismissed on 23.2.1970. Meanwhile in continuation of the Government resolution dated 25.8.1967, Ex.43, the price of the lands to be acquired thereunder were fixed by another Government resolution of the same number dated 27.7.1970 which was produced at Ex.44.

25. On 20.10.1970, plaintiff No.2 was served with a fresh notice under the Ceiling Act and in further inquiry thereunder, plaintiff No.2 examined as witness and his deposition was recorded on 2.2.1971. His deposition was by consent and it was brought on record at Ex.42 wherein inter alia he testified to have given 200 acres of his lands and 250 acres of land by purchasing from others. The Ceiling Case being Ceiling Case No.51/2 was decided by Mamlatdar and ALT on 5.2.1971 and in the order passed thereunder and produced at Ex.40, there is a clear observation as under:

> "In the meantime, Shri Jugal Kishore arrived at an amicable settlement, with the State Government and has made available acres 250- G.0 of land of Dharampur Taluka, for distribution to the

landless persons and handed over the same to the State Government. Besides this, as per the compromise Acres 200 = G.0 of land of this Taluka which stands in his Khata and that of his family members but is in his possession is to be declared as surplus lands".(Emphasis added)

In the concluding paragraph, the Mamlatdar has held that:

"In view of the fact that the matter has been amicably settled between the State Government and the surplus holder, his plea is accepted." (Emphasis added)

26. Plaintiff No.2, thereafter having lost his case in this Court had preferred an appeal in the Supreme Court and the same was withdrawn on 23.8.1971. On 23.8.1971 the Collector, Valsad vide order Ex.38 ordered the payment of compensation amount for 200 acres of the lands surrendered out of the lands and for 200 acres of land surrendered vide deed of surrender Ex.37 at the rate specified in section 23 of the Ceiling Act and for 50 acres of land ordered payment at the rate specified in resolution Ex.44.

27. In view of the aforesaid fact situation, the overall picture that emerges out from the above documentary evidence is that vide letter Ex.36 plaintiff No.2 offered to surrender 400 acres of land to government under the Ceiling Act and did surrender land as such by surrendering 200 acres of his own land and surrendering 250 acres of land by purchasing out of which 50 acres of land were taken as voluntary surrender whereas 200 acres were taken as surrender under Ceiling Case. The intention of plaintiff No.2 that he was giving in all 400 acres of land under the Ceiling Act was abundantly clear in his letter Ex.36 and the said fact also got corroborated by the recital on the top of all the letters of surrender Ex.37 as well as in the entries in the books of accounts of plaintiff No.2 extracts of which were produced at Ex.50 and as was apparent from the order of the Mamlatdar and ALT produced at Ex.40 and relevant portion of which is reproduced hereinabove, the Government accepted the same.

28. In view of the aforesaid fact situation, I am of the opinion that the plaintiffs have failed to prove that surrender of land in question was at the instance of the Government. On the contrary, vide Ex.36 it was clearly established that the surrender of land in question was under the Ceiling Act and not under the Government

resolution Ex.43.

29. On overall view of the matter, I am of the opinion that no error is committed by the learned trial Judge in deciding that surrender was under the Ceiling Act and not under the Government resolution Ex.43 and in above view of the matter, I find myself in complete agreement with the reasoning adopted by the learned trial Judge and the ultimate finding and conclusion reached by him and therefore there is no justifiable ground or valid reason to interfere with the impugned judgments and decrees in exercise of powers under section 96 of the Code and hence the appeals deserve to be dismissed by confirming the judgment and decree of the trial court by which all the suits filed by the plaintiffs came to be dismissed.

30. For the foregoing reasons, the appeals fail and accordingly they are dismissed with no order as to costs.

(A.M. Kapadia, J.)

(karan)